



**6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R03-OAR-2016-0373; FRL-9981-68-Region 3]**

#### **Approval and Promulgation of Air Quality Implementation Plans;**

#### **West Virginia; Interstate Transport Requirements for the 2012 Fine Particulate Matter Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the state of West Virginia. This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0373 at <http://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio,

video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, (215) 814-2021, or by e-mail at [schulingkamp.joseph@epa.gov](mailto:schulingkamp.joseph@epa.gov).

**SUPPLEMENTARY INFORMATION:**

On November 12, 2015, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP) submitted a SIP revision addressing all required infrastructure elements under section 110(a) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS. On May 12, 2017, EPA approved all portions of West Virginia’s November 12, 2015 submittal except the portions of the submittal which address section 110(a)(2)(D)(i)(I) (prongs 1 and 2) and 110(a)(2)(D)(i)(II) (prong 4). *See* 82 FR 22076. As explained in the final rule, EPA intended to take separate action on these portions of West Virginia’s submittal. At this time, EPA is only taking action on 110(a)(2)(D)(i)(I) (prongs 1 and 2) and is not taking action on 110(a)(2)(D)(i)(II) (prong 4); EPA is proposing separate action on prong 4. *See* 83 FR 27734 (June 14, 2018).

**I. Background**

**A. General**

Particle pollution is a complex mixture of extremely small particles and liquid droplets in the air. When inhaled, these particles can reach the deepest regions of the lungs. Exposure to particle pollution is linked to a variety of significant health problems. Particle pollution also is the main cause of visibility impairment in the nation's cities and national parks. PM<sub>2.5</sub> can be emitted directly into the atmosphere, or it can form from chemical reactions of precursor gases including sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), certain volatile organic compounds (VOC), and ammonia. On January 15, 2013, EPA revised the level of the health based (primary) annual PM<sub>2.5</sub> standard to 12 micrograms per meter cubed (µg/m<sup>3</sup>). *See* 78 FR 3086.

## **B. EPA's Infrastructure Requirements**

Pursuant to section 110(a)(1) of the CAA, states are required to submit a SIP revision to address the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements to assure attainment and maintenance of the NAAQS – such as requirements for monitoring, basic program requirements, and legal authority. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances of each NAAQS and what is in each state's existing SIP. In particular, the data and analytical tools available at the time the state develops and submits the SIP revision for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

Specifically, section 110(a)(1) provides the procedural and timing requirements for SIP submissions. Section 110(a)(2) lists specific elements that states must meet for infrastructure

SIP requirements related to a newly established or revised NAAQS such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

### **C. Interstate Pollution Transport Requirements**

Section 110(a)(2)(D)(i)(I) of the CAA requires a state's SIP to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the "good neighbor" provision of the CAA. On March 17, 2016, EPA issued a memorandum providing information on the development and review of SIPs that address CAA section 110(a)(2)(D)(i) for the 2012 PM<sub>2.5</sub> NAAQS (2016 PM<sub>2.5</sub> Memorandum).<sup>1</sup> Further information can be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2017-0337.

## **II. Summary of SIP Revision and EPA Analysis**

West Virginia's November 12, 2015 SIP submittal alleged that the current West Virginia SIP contains adequate measures to ensure that the state is not causing significant contribution to nonattainment in, nor interfering with the maintenance of, any other state with respect to the 2012 PM<sub>2.5</sub> NAAQS. West Virginia refers to the measures detailed in the section pertaining to section 110(a)(2)(A), which included numerous SIP-approved measures and other federally enforceable measures, pursuant to permitting requirements under the CAA, that apply to sources of PM<sub>2.5</sub> and its precursors within West Virginia. A detailed summary of West Virginia's

---

<sup>1</sup> "Information on the Interstate Transport "Good Neighbor" Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)," Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards (March 17, 2016). A copy is included in the docket for this rulemaking action.

submittal and EPA's review and rationale for approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2012 PM<sub>2.5</sub> NAAQS may be found in the TSD for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2016-0373.

EPA used the information in the 2016 PM<sub>2.5</sub> Memorandum and additional information for the evaluation and came to the same conclusion as West Virginia. As discussed in greater detail in the TSD, EPA identified the potential downwind nonattainment and maintenance receptors identified in the 2016 PM<sub>2.5</sub> Memorandum, and then evaluated them to determine if West Virginia's emissions could potentially contribute to nonattainment and maintenance problems in 2021, the attainment year for moderate PM<sub>2.5</sub> nonattainment areas. Specifically, the analysis identified the following areas as potential nonattainment and maintenance receptors: (i) 17 potential receptors in California; (ii) one potential receptor in Shoshone County, Idaho; (iii) one potential receptor in Allegheny County, Pennsylvania; (iv) data gaps exist for the monitors in four counties in Florida; and (v) data gaps exist for all monitors in Illinois. For the 17 receptors in California and one potential receptor in Idaho, based on EPA's evaluation of distance and wind direction, EPA proposes to conclude that West Virginia's emissions do not significantly impact those receptors. For the potential receptor in Allegheny County, EPA expects the air quality affecting that monitor to improve to the point where the monitor will not be a nonattainment or maintenance receptor by 2021 and is therefore unlikely to be a receptor for purposes of interstate transport. For the four counties in Florida and the monitors in Illinois with data gaps, EPA initially treats those receptors as potential nonattainment or maintenance receptors, but it is unlikely that they will be nonattainment or maintenance receptors in 2021 because the most recent air quality data (from 2015-2017 for Florida and from 2015-2016 for

Illinois) indicates that all monitors are likely attaining the PM<sub>2.5</sub> NAAQS and are therefore unlikely to be nonattainment or maintenance concerns in 2021. Therefore, EPA proposes to conclude that West Virginia emissions will not contribute to those monitors. For these reasons, EPA is proposing to find that West Virginia's existing SIP provisions as identified in the November 12, 2015 SIP submittal are adequate to prevent its emission sources from significantly contributing to nonattainment or interfering with maintenance in another state with respect to the 2012 PM<sub>2.5</sub> NAAQS.

### **III. Proposed Action**

EPA is proposing to approve the November 12, 2015 West Virginia SIP revision addressing the interstate transport requirements for the 2012 PM<sub>2.5</sub> NAAQS because the submittal adequately addresses section 110(a)(2)(D)(i)(I) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP, addressing West Virginia's interstate transport obligations with respect to the 2012 PM<sub>2.5</sub> NAAQS, is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: July 12, 2018.

Cosmo Servidio,  
Regional Administrator,  
Region III.

[FR Doc. 2018-16602 Filed: 8/2/2018 8:45 am; Publication Date: 8/3/2018]